



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/05980/2014

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 14 July 2015**

**Decision & Reasons Promulgated  
On 22 July 2015**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**FS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Capel instructed by Migrant Legal Project  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**REMITTAL AND REASONS**

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

## **Introduction**

2. The appellant is a citizen of Albania who was born on 5 January 1987. She claims to have arrived in the United Kingdom on 14 January 2014 with her three children. On 24 January 2014, the appellant claimed asylum. She claimed that her husband's family had been involved in a blood feud in Albania and that she had been trafficked to the UK.
3. On 29 July 2014, the Secretary of State refused the appellant's claim for asylum, for humanitarian protection and that her removal to Albania would breach Arts 2,3 or 8 of the ECHR. On that date also, the Secretary of State made a decision to remove the appellant by way of directions.

## **The Appeal**

4. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 12 January 2015, Judge Maciel made an adverse credibility finding and rejected the appellant's account that she would be at risk on return to Albania.
5. The appellant sought permission to appeal to the Upper Tribunal on four grounds essentially arguing that the judge had failed properly to consider the appellant's claim to be a victim of trafficking.
6. On 6 February 2015, the First-tier Tribunal (Judge Grant-Hutchison) granted the appellant permission to appeal on those grounds.
7. Thus, the appeal came before me.

## **The Appellant's Grounds**

8. Ms Capel, who represented the appellant, relied upon the four grounds upon which permission to appeal had been granted. These grounds all challenge the judge's rejection of the appellant's claim to be at risk on return to Albania as a victim of trafficking. Ground 1 argues that the judge had made no finding as to whether the appellant was, in fact, a victim of trafficking. Ground 2 argues that the judge failed to consider the issue of trafficking within the relevant legal framework, including Directive 2011/36/EU dealing with victims of trafficking. Ground 3 argues that the judge had made a number of "speculative" findings in paras 30, 31, 33 and 34 in rejecting the appellant's account and evidence relating to her trafficking claim. Finally, Ground 4 argues that the judge had wrongly failed to take into account the report of a trafficking expert, Ms Thullesen simply on the basis that the expert, unlike the judge, had not had the benefit of seeing the appellant cross-examined.
9. On their face, as I have said, these four grounds only challenge the judge's decision in respect of the appellant's claim to be a victim of trafficking.

10. In her oral submissions, Ms Capel sought to also challenge the judge's adverse finding that the appellant had not established that her husband's family had been involved in a blood feud. Ms Capel sought permission to amend the grounds of appeal to include two new grounds which, after a short adjournment, she provided in writing. I will call these grounds 5 and 6.
11. Ground 5 argues that the judge's adverse finding in relation to the blood feud involved inappropriate speculation in taking into account that it was implausible that only one attempt had been made on the life of the appellant's husband in all the time they had been together. Ground 6 argues that in reaching her adverse finding the judge had failed properly to take into account a second expert report by Ms Landesmann which dealt with blood feuds and which the judge had also wrongly rejected on the basis that that expert had not had the advantage of seeing the appellant being cross-examined.
12. Ms Capel's application to amend the grounds was opposed by Mr Richards on behalf of the Secretary of State. He submitted that it was entirely inappropriate to raise fresh grounds of appeal not linked to the original grounds some considerable time after the application was made. He pointed out that permission to appeal was normally needed upon a ground in order for it to be raised and that had not been granted here.

### **Decision on the Application to Amend**

13. The power to permit the amendment of the grounds of appeal as "a document" before the Upper Tribunal is contained in rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended). That power is subject to the overriding objectives set out in rule 2 of the 2008 Rules to deal with the case "fairly and justly" including having regard to the factors set out in Rule 2(2).
14. There is much to commend Mr Richards' submission that Ms Capel's application to amend the grounds of appeal should be rejected. They, in fact, amount a distinct challenge to the judge's adverse finding in relation to the appellant's claim based upon a blood feud. There is no suggestion in the original grounds upon which permission to appeal was granted that that finding, rather than the finding in relation to the appellant's claim to be a victim of trafficking, is challenged. Indeed, para 11 of the grounds under "Conclusion" explicitly notes that the sole focus of the grounds is on the judge's finding in relation to whether the appellant is "at risk as a victim of human trafficking". Those grounds are dated 27 January 2015 and permission was granted on 6 February 2015. The new grounds were not raised prior to the hearing and both the Secretary of State and the Tribunal were unaware that the appellant's representative wished to broaden out the challenge to the judge's decision upon which the appellant had been granted permission to appeal. The lateness of the application is striking.

15. The Procedure Rules set out a specific procedural scheme where an unsuccessful party before the First-tier Tribunal wishes to challenge the Tribunal's adverse decision. It is at the stage of making the application that the person challenging has an obligation to set out in as full a form as possible the grounds upon which they seek to challenge that decision. Thereby, the First-tier Tribunal (or, on renewal, the Upper Tribunal) can decide whether there is an arguable case and, if there is, the respondent to the appeal in the Upper Tribunal has an opportunity to file a rule 24 reply. Of course, in some circumstances, additional points may arise after the initial application is made or, indeed, after permission has been granted. For example, new case law may cast a different light on the sustainability of the First-tier Tribunal's decision. But, the overriding obligation of the party seeking to challenge the First-tier Tribunal's decision is to state the essential grounds upon which it is said that decision is legally flawed. The ability to amend the grounds is not to be taken as an open invitation to broaden out those grounds without good reason. Otherwise, the structural framework for the challenge of decisions of the First-tier Tribunal set out in the 2008 Procedure Rules may well be subverted.
16. Ms Capel was able to offer no explanation why the new grounds were not raised at the time of the application for permission or, indeed, subsequently but prior to the hearing. The grounds are, as I have said, late in the extreme and, although their substance reflects some of the original grounds, they are not directed to the judge's decision in relation to the appellant's claim to be a victim of trafficking but rather to be at risk as a result of the blood feud with her husband's family. To that extent, they are discrete. Despite the lateness of the grounds, Mr Richards was, nevertheless, able to make substantive submissions in relation to those grounds.
17. Taking all these matters into account, and bearing in mind the overriding objective of dealing with the case "fairly and justly", I am not persuaded that it is right to permit the amendment of the grounds first raised at the hearing before me.
18. That said, however, I heard substantive submissions on the grounds and, although strictly unnecessary, I will consider them below and, as will become clear, I do not consider that, even if I had permitted the amendment of the grounds, those additional grounds are made out.

### **The Appellant's Claim**

19. Before the judge, the appellant's claim was that her husband's family had been involved in a blood feud since 1990 with a family who lived nearby. She claimed that her maternal grandmother and maternal uncle had been killed as a result. In 2007, the year after she and her husband began cohabiting, he was stabbed. She claimed that her husband had disappeared in June 2013 and she had not seen him since.

20. That, in essence, was the appellant's claim based upon a blood feud.
21. In addition, the appellant claimed that in September 2013 she, and her three children, were taken by two men who said they were going to take her to see her husband. In fact, that did not happen and the men took her abroad, travelling through three countries where she was forced into prostitution, before arriving in the UK in January 2014. She and her children were kept in a house in London where she stayed for ten days and was forced to be a prostitute. The appellant claimed that on 23 January 2014 the men received a phone call and left saying they would be back in five minutes. The appellant took that opportunity to leave with her children and left through the back door and garden. They then took a taxi to Bristol where a school friend, who is a distant relative, lived.
22. That, in essence, is the appellant's claim based upon being a victim of trafficking.

### **The Judge's Decision**

23. Before Judge Maciel, the appellant gave oral evidence. In addition, the appellant relied upon two expert reports of Ms Landesmann dated 6 November 2014 and of Ms Thullesen dated 10 November 2014 who is an expert in trafficking. Ms Landesmann's report dealt both with the appellant's blood feud claim and also her claim to be a victim of trafficking. Ms Thullesen's report dealt only with the latter and, in particular, she considered the appellant's account to be plausible and consistent with accounts of other victims of trafficking from Albania.
24. At paras 25-27 the judge considered the appellant's evidence in relation to her claim based on a blood feud as follows:

"25. I consider the other evidence - the Appellant's answers at interviews, the evidence from the two experts and the oral evidence at court together with the background evidence. I find that the Appellant was not a witness of truth. I find that she had fabricated her claim in order to secure residence in the UK. I find that her assertion that her husband's family were in a blood feud with another family in the vicinity to be undermined by the fact that there had been only one claimed attempt on her husband's life in all the time that they had been together. I take into account that her husband worked in Italy and was not in her home continuously. However, I find that her own evidence maintains that he had returned to the family home and continued to live there. There was one claimed attempt on his life in a pub when his friend intervened. However, thereafter he was left alone. This was despite the fact that the opposing family lived only a street away and that her husband went out to work to provide for the family. The situation was never bad enough for them to leave the area. The Appellant maintained that leaving the area would not alleviate the problem. I find that there was no threat from this family as alleged. A blood feud in circumstances where the opposing family are actively looking to eliminate the male blood

line, would have resulted in more than the one claimed attempt years before her husband is said to have disappeared.

26. Further, I find that the Appellant's inability to name the family in the Home Office interview to undermine the credibility of the claim that there was a blood feud. I find that given that the Appellant had a son who would become a target and who was in fact threatened by men, one of whom was armed, the Appellant would have their name firmly in her mind. I have considered her claim that she was distracted and suffering from post traumatic stress disorder at the time of the interview. The Appellant provided a detailed account which included specific dates and details at the same interview. She was asked at the beginning of the interview if she was happy to be interviewed by a male immigration officer and she stated that it was not important. I find that a Home Office interview would have been a stressful event for the Appellant. She would have been aware of its importance and keen not to make errors. I find that it was this stress that resulted in her inability at the interview to make up the name of the family with which the blood feud was with. I find that had there been a threat from a named family against her husband and her son, she would have the name of that family at the foremost of her mind when being interviewed by the Home Office.
27. Further, the Appellant's claim that she did not have contact with her family is contradicted by her claim that she had left her ID with her family. She sought to recant this evidence in Court before me when she stated that she had to relinquish her ID card before she was issued with a passport. I reject this explanation".

25. Then at para 28 the judge concluded:

"Accordingly, I reject her account that her husband's family were involved in a blood feud. I further reject her account that she had no contact with her own family".

26. Having sought to summarise the two expert reports at paras 7 and 8 of her determination, the judge said this about the reports at para 29:

"I have carefully considered the two expert reports before me. I am not bound to accept their conclusions that the Appellant's claims are credible. I am entitled to make my own decision about this issue. The Appellant's claim was tested by detailed cross-examination and I had the benefit of observing this which neither expert could consider".

27. That, in effect, concluded the judge's reasoning in relation to the appellant's claim based upon a blood feud.

28. At para 30 the judge turned to consider the appellant's evidence in respect of her claim to be a victim of trafficking. At paras 30-37 the judge said this:

"30. I find that her husband did not disappear and I reject the Appellant's account that she was persuaded to leave with two men to be reunited with her husband. I find that the Appellant's account of a journey during which she was sexually exploited to

be vague. She stated that she was aware of the dates as she was counting days and that she was aware of when she was crossing borders because of the different languages used. However, she was unable to state what language the two men were communicating with the 'clients'. Further, it was her case that she was kept away from other people and she would have not had opportunity to assess the differences in languages to consider that borders were crossed as alleged. Further, I find that it would not have been possible for her to keep aside 100 Euros as claimed by her which she later used to facilitate her journey to Bristol.

31. I find that the Appellant's claimed captors would not have allowed the garden door to be left open for the children to play in the garden. This would have brought attention to the children by neighbours. I find that the captors would not have risked the family being able to escape for the children to have freedom within the house and garden.
32. I reject the Appellant's account that she was able to remember her cousin's address in Bristol. In her evidence, she stated that her cousin was sending gifts for Christmas, New Year and her birthday. Given that her birthday was in January, it would have been unlikely that there would have been separate parcels sent. Nevertheless, in re-examination, the Appellant sought to exaggerate this evidence and maintained that gifts were sent for the birthdays of her children also. I find that the Appellant arrived in the UK armed with her cousin's address as she knew that she could get assistance from her whilst she applied for asylum. There was no evidence from her cousin and no acceptable reason for her not to be before the court.
33. I have taken into account that the human traffickers took the Appellant's three children with them on this trip. I find that Ms Thullessen has been candid to report that there is little documentary support of reports of human traffickers taking children of their victims but accept that the immediate threat to the life of a child would be a form of control. I do not accept that this would require the traffickers taking all three children on this difficult and expensive journey. Ms Thullessen speculated that they may have been trafficked for their own value. However, I find that such a 'valuable' family would not have had the luxury of being allowed to play in the garden as claimed by the Appellant. I find that the traffickers would have been keen to contain the family within the house and to avoid the drawing of attention to the children playing in the garden.
34. I do not accept that the Appellant would have been able to retain 100 Euros from a client. I find that all monies would have been paid to her captors and that any monies paid to her would be taken from her by her captors. I find that the Appellant fabricated this aspect to explain how she managed to travel to Bristol to D.
35. Given the number of issues that I find the Appellant not to be credible in, I find that there is insufficient evidence before me to decide whether she was of a different religion to her husband. I find that the Appellant does have contact with her own family. I find that her ID card is with her family as she stated in her

interview. The Appellant claims that she is not in touch with her family because she married a person of a different religion. I find that she is in touch with her family which undermines her assertion to be in a mixed marriage.

36. In the light of my findings, I do not accept that the Appellant is a single mother and I find that her husband is awaiting the outcome of this appeal. I find that if required to return to Albania, the Appellant will have the support of her husband and her family. I find that she and her children will not be at risk of persecution.
37. In all the circumstances of this case, I find that the Appellant is not entitled to International Protection under the Refugee Convention. I have borne in mind that the standard of proof to be applied for the purpose of assessing the Appellant's fear of persecution is low and that benefit of any doubt should be applied liberally in her favour. I do not find the core of the claim to be credible".

## **Discussion**

29. I will deal first with the original grounds of appeal, namely grounds 1-4. Those grounds challenge the judge's decision in relation to the appellant's claim to be a victim of trafficking.
30. First, Ms Capel submitted that the judge had failed to make any findings on whether the appellant was a victim of trafficking. I see no basis for that argument when reading the judge's reasons and conclusions at paras 30-37 as a whole. There, the judge dealt with the appellant's evidence relating to her claim to be a victim of trafficking and gave a number of reasons (which Ms Capel also challenged) which led her to consider that the appellant's claim should fail. The judge found, in para 36, that: "she and her children will not be at risk of persecution". Further, at para 37, the judge stated that: "I do not find the core of the claim to be credible". That was said in the context of the appellant's claim based upon being a victim of trafficking. The judge had already rejected the appellant's account that her husband's family were involved in a blood feud in para 28 of her determination.
31. Consequently, I reject ground 1 that the judge erred in law by failing to make any finding in respect of whether the appellant was a victim of trafficking. She did and it was adverse to the appellant.
32. Secondly, Ms Capel submitted that the judge had erred in law in reaching her adverse findings on the trafficking claim. She submitted that the judge had failed properly to consider the report of Ms Thullesen, a trafficking expert, in rejecting her report simply on the basis that she had not had the advantage of having the appellant's claim tested by cross-examination as had the judge. Ms Capel accepted that the judge had summarised, at least in part, Ms Thullesen's conclusions at para 8 of her determination and also that the judge was not bound to accept her report.



However, relying upon AB v SSHD [2015] EWHC 1490 (Admin) at [40]-[41] Ms Capel submitted that the judge was required to “grapple” with the expert’s opinion which she had not done. Further, the judge had failed to take into account that Ms Thullesen’s report was not uncritical. She referred me to the report at E8-E56 of the appellant’s bundle. Ms Capel pointed out that, in fact, Ms Thullesen had conducted a three and a half hour interview with the appellant (see para 9). The “assessment procedure” was set out at paras 12-16. At para 14 of the report Ms Thullesen set out her experience and methodology as follows:

“14. The purpose of the assessment is to identify the presence of key trafficking indicators and the presence of the three constituent elements defining trafficking in Human Beings within the Palermo Protocol (also relied on within an NRM assessment) namely: Action, Means and Purpose. Within this I scrutinise the presence of key trafficking indicators relating to recruitment, transportation, harbouring, use of deception, force, abduction or coercion of persons in a position of vulnerability and exploitation. Based on my knowledge of working in frontline services, with accepted victims of trafficking, I analyse physical and psychological symptoms commonly associated with exploitation and/or trauma arising from exploitation. I base my analysis of whether a person has been trafficked not only on paper evidence and narrative but also on how the narrative is relayed during our assessment. Drawing on my expertise and experience working with this client group, I find that this method allows me to form a more systematic and sophisticated opinion of the credibility and consistency of a potential VoT. I am particularly aware of applying this method, due to my experience that VoT’s will frequently withhold part of their experiences due to a false sense of loyalty to their exploiters and/or shame. I have furthermore come to understand that persons having undergone situations of significant trauma often suffer with memory problems and difficulty presenting a coherent narrative”.

33. Ms Capel submitted that the report was a critical analysis based upon the appellant’s account, her behavioural presentation and the interviewer’s experience of trafficked victims. At para 94, Ms Thullesen summarised her view as follows:

“94. In summary, based on the documents provided to me as well as the assessment I conducted with [the appellant], I find significant evidence from her recruitment, transportation, harbouring and exploitation to suggest she was trafficked through a number of unknown countries into the United Kingdom. This, in combination with her behavioural presentation during the interview including guilt, fear of the future and the psychosocial symptoms, leads me to conclude, through careful analysis, that I find [the appellant’s] account of being trafficked plausible and her presentation credible. I consider it unlikely that [the appellant] has fabricated her experiences or is feigning her current emotional and psychological difficulties. This opinion is grounded in my experience working with survivors of trauma, particularly

trafficking, and on my academic training in psychological assessment”.

34. Ms Capel pointed out that Ms Thullesen had specifically considered, only to reject, the possibility that the appellant had fabricated her experiences.
35. Mr Richards submitted that the judge had set out the conclusions of the experts, in particular for this purpose Ms Thullesen. The judge had considered the appellant’s evidence which was tested in cross-examination and had made a number of findings which were properly open to her. He submitted that the judge had not failed to follow the approach in AB. At para 33 he had specifically considered Ms Thullesen’s report in respect of the plausibility that traffickers would bring the appellant’s three children with her to the UK if she were being trafficked.
36. In substance, I accept Ms Capel’s submissions. Whilst it is true that the judge summarises, at least to some extent, the conclusions of Ms Thullesen in para 8 of her determination, I am not satisfied that she has properly “grappled” with that report in reaching her adverse finding on the appellant’s claim to be a victim of trafficking. Of course, the judge was not required to accept the expert report’s conclusions (see, for example, JL (medical reports – credibility) China [2013] UKUT 00145 (IAC)). The assessment of the appellant’s credibility was one properly for the judge. However, Ms Thullesen is undoubtedly an expert of considerable experience in trafficking. It was not open to the judge, in my judgment, to reject her report on the basis that she had not had the advantage of seeing the appellant cross-examined. Ms Thullesen’s views were formed after a substantial interview, some three and a half hours with the appellant, and based upon her considerable experience of the victims of trafficking. Whilst in AB it would appear that the decision maker, there the Secretary of State, had wholly failed to consider the expert report on whether that claimant had been trafficked, in this appeal the judge, although making reference to the report both in para 29 (the absence of cross-examination issue) and para 33 (the likelihood of children accompanying a trafficking victim) failed in substance, nevertheless, to grapple with, and give sustainable reasons for rejecting, the expert’s opinion.
37. That expert opinion was a highly relevant piece of evidence which supported the appellant’s trafficking claim and the judge’s failure properly to consider it, in my judgment, sufficiently undermines the judge’s adverse finding such that it cannot stand.
38. In addition, I have considerable doubts whether the judge’s reasoning in paras 30, 31, 33 and 34 are capable of sustaining her adverse finding particularly in the absence of a proper consideration of the expert’s report. First, at para 33 the judge doubted the appellant’s credibility on the basis that traffickers would not have brought her three children with her. Whilst the judge records that Ms Thullesen deals with this at paras 99-101, the expert expresses the view that it was “entirely plausible” that the

appellant would be trafficked with her children even though she accepted that this was not “well documented” but was nevertheless within her personal experience (see para 96). Secondly, the judge offers no basis for what is undoubtedly speculation on her part that the appellant would not be able to retain 100 euros from her client, as she claimed, and that the traffickers would not allow her children to play in the garden. It does not strike me as inherently implausible that either of these “facts” should be true. More significant might have been the appellant’s claim that the men left her alone in the house with easy means of escape which, she claims, she took advantage of. That, however, was not referred to by the judge.

39. Ms Capel relied upon the court’s recognition of the danger of fact-finders regarding aspects of an individual’s account to be implausible when based upon cultural or social assumptions not supported by background evidence (see, for example HK v SSHD [2006] EWCA Civ 1037). Whilst this case law is, perhaps, more concerned with social and cultural assumptions about life outside the UK, I remain unpersuaded that the judge’s “implausibility” findings provide a solid basis for her adverse credibility findings.
40. Consequently, for these reasons, I am satisfied that the judge erred in law in reaching her adverse finding that the appellant had not been a victim of trafficking.
41. None of the original grounds, as I have already noted, directly challenged the adverse finding in relation to the blood feud claim. Even if I had granted permission to amend the grounds to include the new grounds raised by Ms Capel at the hearing, having heard full argument on those grounds, they are, in my judgment, without merit.
42. First, it was not, in my view, inappropriate speculation for the judge to conclude that if there had been a blood feud between the family of the appellant’s husband and a neighbouring family since 1999, that evidence was undermined by the fact that there had only been one attempt on her husband’s life in 2007 and nothing further prior to his disappearance in June 2013. In any event, the judge gave a number of reasons in paras 25-27, which are not challenged, why she did not accept the appellant’s evidence in relation to the blood feud including the appellant’s inability to name in her interview the family involved despite the fact that the feud was long standing.
43. Further, in relation to the other expert report, namely that of Ms Landesmann, Ms Capel also submitted that the judge had given inadequate reasons for rejecting her report and, in fact, made no reference to it in relation to the expert’s view on the appellant’s blood feud claim. When I enquired of Ms Capel as to what parts of the expert report were specifically relied upon as relevant to the judge’s decision on the blood feud claim, Ms Capel drew my attention to only one passage of the report at A14 of the appellant’s bundle. There, in relation to the judge’s reasoning concerning the single incident involving attack upon the appellant’s husband, Ms Capel pointed out that Ms Landesmann stated

that there were “no time limit on feuds”. However, as Mr Richards pointed out the very next sentence of the report states that: “that is to say that the avenging family will continue to pursue the person they consider to have insulted them until they have killed them”. That, Mr Richards submitted, suggested contrary to the appellant’s claim, that there was a certain relentlessness in pursuing a blood feud which was inconsistent with the appellant’s claim that her husband had only been attacked on one occasion. He submitted that the report, if anything, supported the judge’s finding rather than undermined her conclusions in relation to the blood feud.

44. I accept Mr Richards’ submissions on this point. To the extent that the report is relied upon by Ms Capel in her proposed amendments to the grounds, I do not consider that the judge’s failure to take it into account amounted to a material error of law so as to undermine her adverse finding in relation to the blood feud claim.

### **Disposal**

45. In her reply, Ms Capel invited me to remit the appeal to the First-tier Tribunal for a *de novo* rehearing even if I only accepted her submissions based upon the original grounds in relation to the judge’s adverse finding on the trafficking claim. She submitted that the judge had reached an overall adverse credibility finding such that no part of her decision could stand.
46. The factual findings in respect of the blood feud are unaffected by the error of law I have identified. In those circumstances, the findings should, in principle, stand (see DK (Serbia) v SSHD [2006] EWCA Civ 1747). It will be for the Judge on remittal to consider, if it is raised, whether there is any exceptional basis to revisit those findings which, subject to that, must stand (see DM (Zambia) v SSHD [2009] EWCA Civ 474). It will be for the appellant at the remitted hearing to seek to establish she was the victim of trafficking despite the adverse finding on the initial part of her claim.

### **Decision**

47. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of an error of law. That decision cannot stand and is set aside.
48. The appeal is remitted to the First-tier Tribunal for a rehearing before a judge other than Judge Maciel on the basis set out in para 46 above.

Signed

A Grubb  
Judge of the Upper Tribunal